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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,256	09/11/2003	Arthur Ramazanov	4287/1M315USI	5361
7278	7590	11/17/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			SPIVACK, PHYLLIS G	
			ART UNIT	PAPER NUMBER

1614

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,256

Applicant(s)

RAMAZANOV ET AL.

Examiner

Phyllis G. Spivack

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-7-04; 12-2-03</u> | 6) <input type="checkbox"/> Other: ____ |

Applicants' Response filed September 8, 2005 to the Restriction Requirement is acknowledged. Applicants have elected Group I, claims 1–9, drawn to methods for treating obesity, for reducing total body weight and for reducing body fat mass, and pharmaceutical compositions thereto.

Accordingly, claims 10 and 11, drawn to non-elected inventions, are withdrawn from consideration by the Examiner, 37 CFR 1.142(b). Claims 1-9 are presently under consideration.

Information Disclosure Statements filed December 2, 2003 and July 7, 2004 are further acknowledged and have been reviewed.

The abstract of the disclosure is objected to because the present Abstract encompasses subject matter that is not presently under consideration. Correction is required. See MPEP § 608.01(b).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over both Igarashi et al., Biosci., Biotech., Biochem., and Yamahara, J., JP2002187845 (abstract).

Igarashi teaches the administration of taxifolin, the compound depicted at the bottom of page 513, where R = H, which is dihydroquercetin, to reduce total body weight and fat mass. See Table I on page 514. In particular, total liver cholesterol decreased significantly. Yamahara teaches the use of saccharides from the buds of the

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Aralia elata plant as an antiobesity drug. Therefore, in view of the combined teachings of Igarashi and Yamahara, one skilled in the art would have been motivated to combine dihydroquercetin, which is also known as taxifolin, with an araloside to treat obesity. Such would have been obvious in the absence of evidence to the contrary because it is generally *prima facie* obvious to use in combination two or more ingredients that have previously used separately for the same purpose. In re Kerkhoven, 205 USPQ 1069. Obviousness does not require absolute predictability but only the reasonable expectation of success. In re O'Farrell, 7 USPQ 1673.

Specific statements in the references that would spell out the claimed invention are not necessary to show obviousness since questions of obviousness involve not only what references expressly teach, but also what they would collectively suggest to one of ordinary skill in the art. In re Burckel, 201 USPQ 67. Individual references themselves are not required to make a suggestion for the combination to be obvious. For the purposes of combining references, those references need not explicitly suggest combining teachings much less specific references. In re Nilssen, 851 F.2d 1401, 7 USPQ 2d 1500.

The selections of optimal concentrations or ratios of dihydroquercetins and aralosides are parameters well within the purview of the skilled artisan through no more than routine experimentation.

No claim is allowed.


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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The examiner can normally be reached on 10:30 AM-7 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Christopher Low can be reached on 591-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 11, 2005


Phyllis G. Spivack
PHYLLIS SPIVACK
PRIMARY EXAMINER